

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DECISION AND ORDER
10-CR-168

ERIC JONES,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. for supervision of all pretrial proceedings. Defendant filed an omnibus motion seeking suppression of physical evidence seized from 29 Cornwall Avenue. During oral argument with respect to defendant's omnibus motion, counsel for the parties agreed that an evidentiary hearing may not be needed to address the motion to suppress evidence, in light of Magistrate Judge Schroeder's *in camera* review of the transcript, tapes and handwritten notes of the search warrant proceeding before Acting Buffalo City Court Judge Daniel Grasso. Also during oral argument, defendant argued, for the first time, that the statements he made during the execution of the search warrant should also be suppressed. Counsel agreed that an evidentiary hearing was necessary on this issue, because there was a question of fact as to the voluntariness of defendant's statements.

An evidentiary hearing was held before Magistrate Judge Schroeder. At

the conclusion of the hearing, Magistrate Judge Schroeder issued a Report and Recommendation recommending that defendant's motion to suppress physical evidence as well as his motion to suppress statements be denied in their entirety. (Dkt. No. 51)

Defendant submitted objections to the Magistrate Judge's finding with respect to suppression of his statements.¹ (Dkt. No. 59) The Government filed a response (Dkt. No. 61) and oral argument was scheduled for July 25, 2013. On that date, counsel for the Government was present in Court but defense counsel failed to appear. This Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendant's motion to suppress physical evidence and statements is denied in all respect. The parties shall appear before this

¹Defendant does not object to the Magistrate Judge's recommendation to deny his motion to suppress the physical evidence. To accept the report and recommendation of a magistrate, to which no objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Torres v. New York*, 976 F. Supp. 249 (SDNY 1997). The Magistrate's denial of defendant's motion to suppress evidence is neither clearly erroneous nor contrary to law, and is hereby adopted by the District Court.

Court on August 28, 2013 at 12:00 p.m. for a status conference/meeting to set a trial date.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: August 27, 2013